

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHARLES MAKI,

Petitioner,

v.

RENEE BAKER,

Respondent.

Case No. 3:20-cv-00274-MMD-WGC

ORDER

Pro Se Petitioner has submitted an application to proceed *in forma pauperis* (ECF No. 1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). The Court finds that Petitioner has deposits to his inmate account that are frequent enough and large enough to pay the full filing fee of \$5.00.

Additionally, this action appears to be successive under 28 U.S.C. § 2244(b). Petitioner is challenging his custody under a judgment of conviction of the Second Judicial District Court of the State of Nevada, Case No. CR94-0345. Petitioner challenged the validity of the same judgment of conviction in *Maki v. Legrand*, Case No. 3:12-cv-00201-LRH-VPC. The Court dismissed *Maki v. Legrand* because it was untimely under 28 U.S.C. § 2244(d). "[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C. § 2244(b)." *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner thus needs to obtain authorization from the United States Court of Appeals for the Ninth Circuit before he may proceed with this action. 28 U.S.C. § 2244(b)(3). No such authorization appears in the Court's docket. Furthermore, the Court takes judicial notice of the Ninth Circuit's docket in *Maki v. Baca*, Case No. 18-72110. Petitioner applied for authorization to file a second or successive petition. The Ninth Circuit denied his

1 application. It thus appears that Petitioner has not received authorization to proceed with
2 this action. Petitioner will need to show cause why the Court should not dismiss this action.

3 It therefore is ordered that the application to proceed *in forma pauperis* (ECF No.
4 1) is denied. Petitioner will have 45 days from the date that this order is entered to have
5 the filing fee of \$5.00 sent to the Clerk of the Court. Failure to comply will result in the
6 dismissal of this action.

7 It further is ordered that the Clerk of the Court will send Petitioner two copies of this
8 order. Petitioner is ordered to make the necessary arrangements to have one copy of this
9 order attached to the check paying the filing fee.

10 It further is ordered that Petitioner will have 45 days from the date of entry of this
11 order to show cause why this action should not be dismissed as a second or successive
12 petition. Failure to comply will result in the dismissal of this action.

13 DATED THIS 15th day of May 2020.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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